

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION**

CASE NO.: 1:22-cv-4349

AJAY SURESH,

Plaintiff,

v.

HKS CAPITAL PARTNERS, LLC,

Defendant.

**COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)**

Plaintiff AJAY SURESH by and through his undersigned counsel, brings this Complaint against Defendant HKS CAPITAL PARTNERS, LLC for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff AJAY SURESH (“Suresh”) brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Suresh's original copyrighted Work of authorship.
2. Suresh is an experienced, self-taught photographer, who has been capturing street and travel photographs for more than five years. He uses Olympus lenses and cameras for his work.
3. Defendant HKS CAPITAL PARTNERS, LLC (“HKS”) is a real estate advisory firm. At all times relevant herein, HKS owned and operated the internet website located at the URL <https://www.hks.com> (the “Website”).

4. Suresh alleges that HKS copied Suresh's copyrighted Work from the internet in order to advertise, market and promote its business activities. HKS committed the violations alleged in connection with HKS's business for purposes of advertising and promoting sales to the public in the course and scope of the HKS's business.

JURISDICTION AND VENUE

5. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

6. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

7. Defendant is subject to personal jurisdiction in New York.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

DEFENDANT

9. HKS Capital Partners, LLC is a New York Limited Liability Company, with its principal place of business at 38 West 21st Street, 8th Floor, New York, NY 10010, and can be served by serving its Registered Agent, HKS Capital Partners, LLC, 38 West 21st Street, 8th Floor, New York, NY 10010.

THE COPYRIGHTED WORK AT ISSUE

10. In 2019, Suresh created the photograph entitled "East Harlem Skyline", which is shown below and referred to herein as the "Work".



11. At the time Suresh created the Work, Suresh applied copyright management information to the Work consisting of gutter credit and reserved some rights, *inter alia*, attribution.

12. Suresh registered the Work with the Register of Copyrights on July 29, 2019 and was assigned registration number VA 2-164-937. The Certificate of Registration is attached hereto as Exhibit 1.

13. Suresh's Work is protected by copyright but is not otherwise confidential, proprietary, or trade secrets.

14. At all relevant times Suresh was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY DEFENDANT

15. HKS has never been licensed to use the Work at issue in this action for any purpose.
16. On a date after the Work at issue in this action was created, but prior to the filing of this action, HKS copied the Work.
17. On or about October 10, 2020, Suresh discovered the unauthorized use of his Work on the Website. The Work was used as a cover photo for HKS' 'East Harlem Portfolio' page link.
18. HKS copied Suresh's copyrighted Work without Suresh's permission.
19. After HKS copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its real estate advisory business.
20. HKS copied and distributed Suresh's copyrighted Work in connection with HKS's business for purposes of advertising and promoting HKS's business, and in the course and scope of advertising and selling products and services.
21. HKS committed copyright infringement of the Work as evidenced by the documents attached hereto as Exhibit 2.
22. Suresh never gave HKS permission or authority to copy, distribute or display the Work at issue in this case.
23. HKS never obtained a license to use the Work.
24. Suresh notified HKS of the allegations set forth herein on July 13, 2021 and August 26, 2021. To date, HKS has failed to respond to Plaintiff's Notices.
25. When HKS copied and displayed the Work at issue in this case, HKS removed Suresh's copyright management information from the Work.

26. Suresh never gave HKS permission to display the Work without attribution or remove copyright management information.

**COUNT I
COPYRIGHT INFRINGEMENT**

27. Suresh incorporates the allegations of paragraphs 1 through 26 of this Complaint as if fully set forth herein.

28. Suresh owns a valid copyright in the Work at issue in this case.

29. Suresh registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

30. HKS copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Suresh's authorization in violation of 17 U.S.C. § 501.

31. HKS performed the acts alleged in the course and scope of its business activities.

32. HKS's acts were willful.

33. Suresh has been damaged.

34. The harm caused to Suresh has been irreparable.

**COUNT II
REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION**

35. Suresh incorporates the allegations of paragraphs 1 through 26 of this Complaint as if fully set forth herein.

36. The Work at issue in this case contains copyright management information ("CMI").

37. HKS knowingly and with the intent to enable or facilitate copyright infringement, removed CMI from the Work at issue in this action in violation of 17 U.S.C. § 1202(b). A screenshot of the Work on Suresh's Flickr website is attached hereto as Exhibit 3.¹

38. HKS committed these acts knowing or having reasonable grounds to know that it will induce, enable, facilitate or conceal infringement of Suresh's rights in the Work at issue in this action protected under the Copyright Act.

39. HKS caused, directed and authorized others commit these acts knowing or having reasonable grounds to know that it will induce, enable, facilitate or conceal infringement of Suresh's rights in the Work at issue in this action protected under the Copyright Act.

40. Suresh has been damaged.

41. The harm caused to Suresh has been irreparable.

WHEREFORE, the Plaintiff Ajay Suresh prays for judgment against the Defendant HKS Capital Partners, LLC that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. §§ 501, 1203;

b. Defendant be required to pay Plaintiff his actual damages and HKS's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. §§ 504, 1203;

¹ Found on the publicly available URL: https://www.flickr.com/photos/ajay_suresh/48200097101/in/photolist-2neTNf9-2gYEE4g-2gYDVbB-2neTN6m-2goE1co-2gYEE8E-2neNxXs-2j7zdhZ-2j7zdpC-2j7BLqq-2neNXLq-2neV45q-23FuBHz-vZrwpr-2grh6AV-2gYEDSQ-2gYDVj2-2gYEEga-24XkPqa-2gYDVEN-2gYEDLY-29sdTjN-2mmUsMu-WqDavU-2grhkn3-2goE1zx-2neV412-2neU4s5-2neNxSx-2neNy2A-xstYer-2mmThCn-2goE1Xw-2gdfJy9-2gdgcjp-2gdfYmm

- c. Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;
- d. Plaintiff be awarded pre- and post-judgment interest; and
- e. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: May 26, 2022

Respectfully submitted,

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